

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

ITR No.272 to 276 of 1995

Date of decision: October 21, 2013.

Commissioner of Income Tax (Central), Ludhiana

... **Appellant**

v.

M/s Bansal Abushan Bhandar, Karnal

... **Respondent**

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present: Shri Akshay Jindal, Advocate, for the assessee.
Shri Rajesh Sethi, Advocate for the revenue.

Dr. Bharat Bhushan Parsoon, J.

By way of this order, we shall decide ITR Nos.272 to 276 of 1995 and CWP No.1856 of 1993.

In a consolidated order dated 14.5.1993 passed in ITA Nos.9434 to 9438/Del/90 in respect of assessment years 1982-83 to 1986-87, following question of law had been referred for opinion of this Court by the Income Tax Appellate Tribunal, Delhi Bench-B, New Delhi:-

“Whether the Tribunal was right in cancelling the penalty imposed u/s 271(1) of the Income Tax Act, 1961?”

Taking stock of facts as also of circumstances of this case in the interface of law on the point, this Court had answered this question in favour of the revenue and against the assessee. It was on 6.11.2006 that a review petition qua this order was

preferred by the assessee on 27.9.2007, which, after providing hearing to counsel for the applicant-assessee was dismissed by this Court on 12.10.2007. The assessee had challenged order dated 6.11.2006 by way of Special Leave to Appeal in the Hon'ble Supreme Court of India. Accepting the plea of the assessee that the impugned order of this Court had been delivered ex-parte but without expressing its opinion on merits of the case, liberty was granted to move this Court to put-forth its case. Thus, by setting aside the impugned ex-parte order, SLP was dismissed.

After receipt of the order of Hon'ble Supreme Court of India on 27.3.2009, order dated 6.11.2006 was passed in CM Nos.2986, 2989, 2992, 2995 and 2998 of 2009, Income Tax References were restored to their original number and were ordered to be listed before an appropriate Bench. It is in this backdrop that these references are before us for answering the question referred to this Court by the Tribunal.

It may be noticed further that in addition to challenging the order of penalty inter-alia under Section 271(1) of the Income Tax Act, 1961 (for short, the Act) before the appellate authority, the assessee on his part had started proceedings for waiver of the penalty imposed for the assessment years 1982-83 to 1986-87. Recommendation of the income tax authorities had not found favour with the Central Board of Direct Taxes and consequently the penalty was not waived.

Rather on 20.9.1991, CBDT vide letter Annexure P-

10, informed the petitioner to make a petition under Section 273 (4) of the Act before the Commissioner of Income Tax (Central), Ludhiana, Punjab if there are circumstances amounting to genuine hardship. Sequel, the assessee had moved the competent authority for waiver of penalty and interest on the ground of genuine hardship vide a petition made on 11.10.1991 (Annexure P-11). Plea of the assessee was not accepted.

Dissatisfied with the verdict of CBDT and CIT, Central, Ludhiana against it, the assessee had filed Civil Writ Petition (No.1856 of 1993), which, vide order dated 21.3.1994, was directed to be heard along with these references. The writ petition of the assessee is also being taken up for adjudication along with these references.

Before proceeding to answer the question of law, it would be appropriate to narrate the facts of the case as also the circumstances in which this question arose before the Tribunal.

More facts follow:

The assessee firm was being assessed to income tax. Premises of father of the partners of the assessee firm were raided on 16.7.1987 and account books pertaining to transactions for the period ranging from 1978 to 1987 were seized. In September 1987, the assessee approached the Commissioner of Income Tax, Rohtak with a proposal of settlement offering additional income of Rs.29 lacs for the assessment years 1982-83 to 1986-87.

However, when the assessee got information that the

Department was issuing notices under Section 148 of the Act, the assessee worked overtime and filed revised returns for the year 1982-83 to 1986-87. Notices under Section 148 of the Act, however, was served upon the assessee for all these assessment years. The notices had also been issued for initiation of penalty proceedings.

The assessee had filed an application under Section 273 of the Act before the competent authority seeking waiver of penalty on the ground that it had voluntarily offered additional amount and further that there was no detection by the revenue and, thus, no concealment could be attributed to it. Notwithstanding the case of the assessee having been recommended by the authorities below, plea of the assessee was not accepted; neither waiver was granted by the Central Board of Direct Taxes nor by CIT (Central), Ludhiana to whom application had been moved under Section 273(4) of the Act.

Contention of the assessee before this Court is that disclosure had been made by it voluntarily and there was no detection by the revenue. It is claimed that such disclosure should not have automatically resulted into initiation of proceedings under Section 148 of the Act, resulting in revised assessment and consequent imposition of penalty inter-alia under Section 271(1)(c) of the Act.

Plea of the revenue on the contrary is that exercise of power under Section 271(1)(c) of the Act is statutory in nature and income of the assessee having escaped assessment due to concealment and furnishing of inaccurate particulars in its

returns by the assessee, such power had rightly been exercised by the Assessing Officer. Recommendations of the Tribunal were challenged.

When rival contentions of the parties are evaluated, it becomes clear that it was not an innocuous omission on the part of the assessee but was a deliberate act of concealment of income by furnishing inaccurate particulars in its returns for the assessment years 1982-83 to 1986-87. Had it been a case of single year, plea of the assessee that it was merely an omission and there was no mens-rea, could possibly be considered.

Furnishing of inaccurate particulars was clearly with a view to conceal income consecutively for five assessment years. It speaks volumes of contrivance by the assessee with apparent element of mens-rea. Thus authority cited by the assessee, reported as Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai and another, (2007)6 SCC 329, wherein it was held that for imposition of penalty, an element of mens-rea is needed, does not support the case of the assessee.

Looking the matter from another angle, the assessee itself had filed revised returns giving fresh particulars of its income but it was only when the assessee was cornered consequent upon search and seizure proceedings and had received disturbing information of initiation of proceedings under Section 148 of the Act being contemplated against it. Thus, by no means, was it a voluntary exercise of furnishing of fresh particulars by way of revised returns for all these years. When there is no explanation offered by the assessee for having

furnished inaccurate particulars of its income (in original assessment framed against it) resulting in concealment of income which had escaped assessment, authority cited by the assessee as The Commissioner of Income tax, West Bengal v. Anwar Ali, 1970(2) SCC 185, holding that there should be sufficiency of grounds for rejection of assessee's explanation as false in assessment proceedings, does not come to the rescue of the assessee.

At this stage, it is relevant to take note of the findings recorded by Commissioner of Income Tax (Appeals) on facts of the present case, as below:-

“... In view of these facts, I am of the view that the appellant disclosed the additional income for these years only when concerned (cornered). Books of account and documents etc. seized during search u/s 132 of Income Tax Act, 1961, from the joint residence of the partners of the appellant firm and their father, showed substantial undisclosed income. As mentioned in paras 2 & 3 above, the appellant was able to satisfy the learned Assessing Officer that these accounts/documents belonged to the appellant firm. There was thus no way that the appellant or its partners could escape the additional tax liability and other consequences of not disclosing substantial income for those years in the returns of income originally filed and on the basis of which assessments already stood completed. The additional income disclosed by the appellant in the returns of income filed on 4.1.88 cannot therefore, be said to be a disclosure made voluntarily or bona fide.”

Thus, on these facts and circumstances projected by Commissioner of Income Tax (Appeals), there remains no doubt that it was not only a case of furnishing of inaccurate particulars in earlier assessments but is also a case of concealment of income which thus had escaped assessment. Sequel, even

when strict compliance in terms of Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts Private Limited, (2010)11 SCC 762 sought by the assessee is made of the provisions of Section 271(1)(c) of the Act, it is clearly a case of concealment of income and by no means can be said to be a disclosure made voluntarily or bona fide.

Considerations for adjudication of an application/petition under Section 273 of the Act for waiver of penalty and interest are that stand of the assessee should be of voluntary disclosure in good faith and that cooperation was extended by it to the income tax authorities and further that the tax due on the basis of returned income had already been paid and it was case of genuine hardship. However, in the present case, these facts are lacking.

It has already been noticed that surrender of additional income of Rs.29.00 lacs and action of filing of fresh returns by the assessee for the assessment years 1982-83 to 1986-87 was neither a voluntary affair nor was made in good faith much less by extending cooperation to the authorities. Rather, this entire exercise by the assessee was preceded by search and seizure operations resulting in seizure of books of account of the assessee which had positively suggested concealment of income which had earlier escaped assessment. It has already been noticed in this context that proceedings for escapement, viz, under Section 148 of the Act had been initiated against the assessee. Chain of events and concomitant conduct of the assessee is a clear indicator that there was complete absence of good faith and when the the assessee was placed in a very tight and rather vulnerable position, only then additional

income had been disclosed. By him

The assessee had rather conducted unfairly. In short, had there been no search and consequent seizure of account books disclosing concealment of huge income, the assessee was sitting pretty since 1982 and had already got finalized its assessments for the year 1982-83 to 1986-87 clearly by furnishing inaccurate particulars and concealing correct and real income.

Claim of the assessee that it was an honest move made by it in good faith while extending cooperation to the authorities and that it was rather a case of genuine hardship to the assessee is a farce. When faced with facts, the assessee has not been able to support and sustain this stand; conduct of the assessee rather is entirely the other way round and belies the case of claimed good faith and alleged genuine hardship.

Consequently, notwithstanding the recommendations (Annexure R-1) of the authorities below, CBDT did not fall in line with the authorities below and rejecting the claim, rather advised the assessee to make a petition under Section 273-A(4) of the Act to the Commissioner of Income Tax (Central), Ludhiana if there was some genuine hardship.

As has already been noticed, such petition was preferred by the assessee but was dismissed on 27.1.1993 by the Commissioner of Income Tax (Central), Ludhiana when he did not find any case of genuine hardship. Giving excerpts of assets of the firm as also of the partners as on 31.3.1992, the Commissioner of Income Tax (Central), Ludhiana had come to a

conclusion that total wealth of the firm and partners as on 31.3.1992 was Rs.42,96,455 (Annexure P-16).

Following observation made by the Commissioner of Income Tax (Central), Ludhiana in order dated 27.1.1993 may be noticed:-

“As regards the petition of the assessee under sub-section (4) of Section 273A, merely because the assessee has to pay taxes of Rs.28,56,089/- against the income surrendered at Rs.29 lakhs, it does not become case of genuine hardship as stipulated under sub section (4). Similarly, the facts that the assessee devoted time, incurred expenses and suffered hazards of travelling etc. do not make a case of genuine hardship. As regards the good faith of the assessee and alleged assurance from the CIT, Haryana, Rohtak, the same have already been dealt with above. Genuine hardship means the real hardness of fate or circumstances or real severe suffering or privation. There is no such factor or circumstances in this case. Further, factors like nature of default or lapse, financial condition of the assessee etc. are also germane to the determination of such a question. Further it has also to be seen whether having regard to the quantum of penalty and the financial condition of the assessee, recovery of the penalty would spell ruination to the business of the assessee. The default or lapse is quite serious as concealment of particulars of income was discovered by seizure of books of accounts of assessee by the Department. The assessee has not been able to show that the recovery of penalties imposed would spell ruination to the business of the assessee or would cause genuine hardship to him, keeping in view the above criteria.

The financial position of the assessee and partners is very sound. The firm and partners have sufficient assets detailed below from which the assessee can easily pay the penalties and such payments would definitely not cause ruination to the

assessee's business.

xxx

xxx

xxx

xxx

It will be seen from the above that the total assets of the firm and partners are Rs.42,96,455/-. Out of this, the value of immovable assets is only Rs.7,62,250/-. As against this, penalties payable u/s 271(1) are only Rs.7,43,300/-. The firm and partners are severally and jointly responsible for payment of taxes etc. due from the firm. The firm and partners have sufficient funds from the firm. The firm and partners have sufficient funds from which they can pay the penalty demand of Rs.7,43,300/-. The payment of penalties will, thus not spell ruination to the assessee's business and will not cause any genuine hardship to the assessee."

Sequely, the petition of the assessee under Section 273-A(4) of the Act was dismissed. Learned counsel for the assessee seeking support from Jaswant Rai and another v. Central Board of Direct Tax and Revenue and others, (1998)5 SCC 77, has urged that it is entitled to benefit of Section 271(4-A) of the Act as it exhausted remedy for waiver of penalty. Reference in this regard has been made to para 6 of the judgment, which, for ready reference, is reproduced as below:-

"6. A reading of the provisions of Section 274(4-A) [after deletion of the said provisions by Taxation Laws (Amendment) Act, 1975, with effect from 1-10-1975 such power is now conferred upon the Commissioner under Section 273-A of the Act] will indicate that it is a power coupled with a duty to do justice and the Commissioner is under statutory obligation to exercise the power in favour of an assessee which has fulfilled all the conditions of the provisions. In deciding such a matter, therefore, he cannot take into account factors or reasons which are invalid or extraneous to the said provisions. The principal condition for grant of relief under the said provision is that the assessee should have voluntarily and in good faith made full disclosure of

his income prior to the detection of the same and such disclosure could be made even otherwise than in the course of a return by submitting a petition to the Commissioner. In the present case, we have already noticed that the assessee had made the disclosure prior to the coming into force of the voluntary disclosure scheme and long before the Department could initiate any action in respect of the concealed income. The levy of penalty under Section 271(1)(c) by itself will not be a circumstance to take him out of the purview of Section 271(4-A) of the Act.”

In the said authority, it was a case of voluntary disclosure scheme and the assessee had made the disclosure prior to the coming into force of the said scheme and long before the Department could initiate any coercive action in respect of the concealed income of the assessee. However, the facts of the case in hand are entirely different as it is not a case of voluntary disclosure scheme; rather, it is a case of search and seizure and as a sequel thereto, accounts were sealed and large scale concealment of income was detected.

Circumstances in which revised returns for five years were submitted, when notice under Section 148 of the Act had been issued to the assessee etc., have been dealt with in detail in earlier part of the judgment. Consequently, the authority cited by the petitioner does not come to the rescue of the petitioner.

In the present writ petition, no fault in order Annexure P-16 could be successfully pointed out to make out a case of genuine hardship. Sequelly, the writ petition having no merit, is dismissed.

It is further held that the Tribunal was wrong in

cancelling the penalty imposed on the assessee under Section 271(1)(c) of the Income Tax Act, 1961.

Thus, the references on their own merits and circumstances are answered in favour of the revenue and against the assessee.

[Dr. Bharat Bhushan Parsoon]
Judge

October 21, 2013.
kadyan

[Rajive Bhalla]
Judge